

AMENDMENT

Serial Number: 10/654,422

Filing Date: September 4, 2003

Title: Microencapsulation Of Oxygen Or Water Sensitive Materials

Page 5

SWR113631RCE2

REMARKS

The Official Action mailed August 26, 2008 has been carefully considered. Claims 7, 9, 10, 13-17, 19 and 20 are pending in the present application and stand rejected. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Claim Amendments

Claim 7 has been amended to recite “said structuring agent present in the form of platelets.” Support for this amendment may be found, for example, in paragraph [0027] of the published application, which recites in part: “the structuring agent provides platelet-like structures on the surface of the polymer material.” Claim 7 has also been amended to recite “wherein said polymer material is selected from the group consisting of gelatin, alginate, carrageenan, casein, proteins, polysaccharides, gums, celluloses, waxes, rosins, polyphosphates and mixtures thereof.” Support for this amendment may be found in now cancelled claim 10. Claim 7 has further been amended to recite: “wherein said structuring agent decreases oxygen and water permeability and protects the encapsulated ingredient from oxygen and water permeability through said polymer material rendering said shell component substantially oxygen and water impermeable.” Support for this amendment may be found in paragraph [0033] of the published application which recites that the shell compositions “protect the encapsulated ingredient from oxygen and/or water permeability” as well as in paragraph [0034] of the published application which recites that the oxygen and/or water barrier is “at least substantially oxygen and/or water impermeable to prevent significant oxygen and/or water permeation over a desired time period or shelf-life.” No new matter has been added by this amendment.

Rejections Under 35 USC §103

Claims 7, 9, 10, 13-17 and 19-20 stand rejected under 35 USC §103 as being unpatentable over Ciliberto et al., U.S. Patent No. 4,288,460 in view of Sherwood et al., U.S. Patent No. 5,585,115. To the extent that the rejection remains relevant to the amended claims, applicants note as follow.

AMENDMENT

Serial Number: 10/654,422

Filing Date: September 4, 2003

Title: Microencapsulation Of Oxygen Or Water Sensitive Materials

Page 6

SWR113631RCE2

As an initial matter, claim 7 has now been amended to recite that the polymer material is selected from the group consisting of gelatin, alginate, carrageenan, casein, proteins, polysaccharides, gums, celluloses, waxes, rosins, polyphosphates, and mixtures thereof.

The *Office Action* refers to Ciliberto for disclosing

“a food ingredient microcapsule comprising core particles of a normally hydroscopic, water-soluble food ingredient and a continuous encapsulating coating on said core particles. Wherein the coating consists essentially of 5-37% of a fatty acid derivative (such as polyoxyethylene sorbitan monooleate, a sugar), 15-56% of propylene glycol, and 38-62% of a flow agent (e.g. fumed silica) (abstract).” *Office Action* of August 26, 2008, page 2.

In addition, Ciliberto is referred to for disclosing “the coating composition incorporates a flow material, wherein a preferred flow material is fumed silica derived from colloidal silicon dioxide.” *Office Action*, page 2. Furthermore, the *Office Action* recites that “since the prior art teaches the identical chemical structure for the core, structuring agent and the polymer material, the properties (pendant ionic groups, formation of an ionic bridge, and decrease in oxygen and water permeability) applicant discloses and/or claims are necessarily present.” *Office Action*, page 3.

However, given that Ciliberto discloses using a fatty acid derivative, it does not appear that Ciliberto discloses or renders obvious the polymer materials as amended herein. Furthermore, as the disclosed coating material of Ciliberto and the presently amended claimed polymer materials are now different, it is no longer believed proper to conclude that Ciliberto would inherently provide pendant ionic groups and formation of an ionic bridge and a decrease in oxygen and water permeability as suggested in the *Office Action*. Thus, as the fatty acid derivative and the polymer materials are not the same, it is believed that the inherency argument advanced at page 3 of the *Office Action* is no longer applicable.

In addition, Applicants note that as best understood, the *Office Action* suggests at page 3 that pendant ionic groups and formation of ionic bridges may be considered a property of a given composition. Applicants do not formally consider the presence and formation of pendant ionic groups as a property, but rather a compositional feature that one may not simply assume present

AMENDMENT

Serial Number: 10/654,422

Filing Date: September 4, 2003

Title: Microencapsulation Of Oxygen Or Water Sensitive Materials

Page 7

SWR113631RCE2

in the art, even if the same chemicals may be used. Again, that follows from the fact that one can utilize an organic compound in an ionic form, or non-ionic form, depending upon its surrounding environment (e.g. pH). In any event, the claims have been amended to recite polymer materials for the core that are not understood to be disclosed or suggested by the art of record.

Furthermore, claim 7 has now been amended to recite that the structuring agent is present in the form of platelets and that the structuring agent decreases oxygen and water permeability and protects the encapsulated ingredient from oxygen and water permeability through said polymer material rendering said shell component substantially oxygen and water impermeable.

Ciliberto does not disclose the use of a structuring agent in the form of a platelet. Rather, Ciliberto is cited for disclosing a flow agent of fumed silica; however, the fumed silica is, again, not disclosed as being in the form of a platelet. See *Office Action*, page 2. In addition, and this is important, Ciliberto results in “coated particles [that] have a long shelf life and still are substantially instantaneously soluble in water.” (Abstract). However, this is now opposite to the presently claimed subject matter, wherein the structuring agent decreases oxygen and water permeability and renders the shell component substantially oxygen and water impermeable.

Sherwood et al is not believed to make up for the deficiencies of Ciliberto. Accordingly, it is respectfully asserted that the combination of references fail to teach or render obvious the presently claimed subject matter of independent claim 7 and the claims dependent therefrom.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

By: /Steven J. Grossman/
Steven J. Grossman, Ph.D.
Reg. No. 35,001